

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff

v.

DAIRYLAND POWER COOPERATIVE,

Defendant.

Civil Action No.: 12-cv-462

SIERRA CLUB,

Plaintiff

v.

DAIRYLAND POWER COOPERATIVE,

Defendant.

Civil Action No.: 10-CV-303-bbc

CONSENT DECREE

b. Section 111 of the Act, 42 U.S.C. § 7411, and 40 C.F.R. § 60.14; and

c. Title V of the Act, 42 U.S.C. § 7661-7661f, but only to the extent that such Title V claims are based on DPC's failure to obtain an operating permit that reflects applicable requirements imposed under Part C or D of Subchapter I of the Act, from any operations, emissions, or modifications commenced at G-3, J.P. Madgett, or Alma Units 1, 2, 3, 4 or 5 or any combination thereof, prior to the Date of Lodging of this Consent Decree. Entry of this Consent Decree shall also resolve all civil claims, causes of action, demands, actions and/or rights of action, of whatever kind or nature, that the Sierra Club now has under 42 U.S.C. § 7604(a), Wis. Stat. ch. 285, and Wis. Admin. Code chs. NR 400-499 against DPC for any alleged violations of visible emissions (opacity) limits and Carbon Monoxide (CO) limits applicable to Alma, G-3 or J.P. Madgett which occurred prior to the Date of Lodging of this Consent Decree.

## **XII. PERIODIC REPORTING**

147. After entry of this Consent Decree, DPC shall submit to Plaintiffs a periodic report, within 60 Days after the end of each half of the calendar year (January through June and July through December). The report shall include the following information:

- a. all information necessary to determine compliance during the reporting period with: all applicable 30-Day Rolling Average NO<sub>x</sub> Emission Rates and 30-Day Rolling Average SO<sub>2</sub> Emission Rates; all applicable 12-Month Rolling Average Emission Rates for SO<sub>2</sub>; all applicable PM Emission Rates; all applicable Unit-Specific Annual Tonnage Caps; all applicable Plant-Wide Annual Tonnage Caps; all applicable System-Wide Annual Tonnage Limitations; the obligation to

- monitor NO<sub>x</sub>, SO<sub>2</sub>, and PM emissions; the obligation to optimize PM emission controls; and the obligation to Surrender NO<sub>x</sub> Allowances and SO<sub>2</sub> Allowances;
- b. 3-hour rolling average PM CEMS data as required by Paragraph 128, identifying all 3-hour periods in excess of 0.030 lb/mmBTU or 0.015 lb/mmBTU, as appropriate, and all periods of monitor malfunction, maintenance, and/or repair as provided in Paragraph 124;
  - c. emission reporting and Allowance accounting information necessary to determine Super-Compliant NO<sub>x</sub> and SO<sub>2</sub> Allowances that DPC claims to have generated in accordance with Sections V.G and VI.G through control of emissions beyond the requirements of this Consent Decree;
  - d. schedule for the installation or upgrade and commencement of operation of new or upgraded pollution control devices required by this Consent Decree, including the nature and cause of any actual or anticipated delays, and any steps taken by DPC to mitigate such delay;
  - e. all affirmative defenses asserted pursuant to Paragraphs 163 through 171 during the period covered by the progress report;
  - f. an identification of all periods when any pollution control device required by this Consent Decree to Continuously Operate did not Continuously Operate, the reason(s) for the equipment not operating, and the basis for DPC's compliance or non-compliance with the Continuous Operation requirements of this Consent Decree; and

- g. a summary of actions implemented and expenditures made pursuant to implementation of the Environmental Mitigation Projects required pursuant to Section IX.

148. In any periodic report submitted pursuant to this Section XII, DPC may incorporate by reference information previously submitted under its Title V permitting requirements, provided that DPC attaches the Title V Permit report (or the pertinent portions of such report) and provides a specific reference to the provisions of the Title V Permit report that are responsive to the information required in the periodic report.

149. In addition to the reports required pursuant to this Section XII, if DPC violates or deviates from any provision of this Consent Decree, DPC shall submit to Plaintiffs a report on the violation or deviation within 10 business days after DPC knew or by the exercise of due diligence should have known of the event. In the report, DPC shall explain the cause or causes of the violation or deviation and any measures taken or to be taken by DPC to cure the reported violation or deviation or to prevent such violation or deviation in the future. If at any time, the provisions of this Consent Decree are included in Title V Permits, consistent with the requirements for such inclusion in this Consent Decree, then the deviation reports required under applicable Title V regulations shall be deemed to satisfy all the requirements of this Paragraph.

150. Each DPC report shall be signed by the Responsible Official as defined in Title V of the Act for the Genoa Site or Alma Site, as appropriate, and shall contain the following certification:

*This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify*

*under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or misleading information to the United States.*

### **XIII. REVIEW AND APPROVAL OF SUBMITTALS**

151. DPC shall submit each plan, report, or other submission required by this Consent Decree to Plaintiffs whenever such a document is required to be submitted for review or approval pursuant to this Consent Decree. EPA may approve the submittal or decline to approve it and provide written comments explaining the bases for declining such approval as soon as reasonably practicable. Within 60 Days of receiving written comments from EPA, DPC shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal to EPA; or (b) submit the matter for dispute resolution, including the period of informal negotiations, under Section XVI (Dispute Resolution) of this Consent Decree.

152. Upon receipt of EPA's final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, DPC shall implement the approved submittal in accordance with the schedule specified therein or another EPA-approved schedule or as resolved at the completion of the Dispute Resolution process.

### **XIV. STIPULATED PENALTIES**

153. For any failure by DPC to comply with the terms of this Consent Decree, and subject to the provisions of Sections XV (Force Majeure) and XVI (Dispute Resolution), DPC shall pay, within 30 Days after receipt of written demand to DPC by the United States, the following stipulated penalties to the United States: